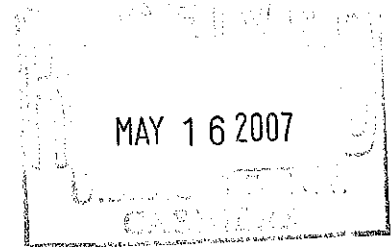


07-CV

3840

James E. Mercante (JM 4231)
Michael E. Stern (MS 9113)
RUBIN, FIORELLA & FRIEDMAN LLP
292 Madison Avenue
New York, NY 10017
(212) 953-2381
Attorneys for Petitioner
DONJON MARINE CO., INC.
As owner of Tug WILLIAM E.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

CV

**VERIFIED COMPLAINT FOR
EXONERATION FROM OR
LIMITATION OF LIABILITY**

of

DONJON MARINE CO., INC. as owner of Tug
WILLIAM E. for Exoneration from or Limitation
of Liability,

Petitioner.

DONJON MARINE CO., INC. (hereinafter "Petitioner"), by its attorneys, RUBIN, FIORELLA & FRIEDMAN LLP, for its Verified Complaint seeking Exoneration from or Limitation of Liability, alleges, upon information and belief, as follows:

1. This is a proceeding for Exoneration from or Limitation of Liability pursuant to 46 U.S.C. §§ 30501 *et seq.*, involving admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and Rule "F" of the Supplemental Rules for Certain Admiralty and Maritime Claims, as hereinafter more fully appears.

2. Petitioner, Donjon Marine Co., Inc. is a corporation organized and existing under the laws of the state of New Jersey with an office and place of business at 1250 Liberty Avenue, Hillside, New Jersey.

3. Petitioner is the owner of the Tug WILLIAM E., an 84.8-foot towing vessel built in 1952 (hereinafter referred to as the "Vessel").

4. On or about May 1, 2007, Petitioner received a Summons with Verified Complaint in an action captioned *DENNIS KIRBY v. DONJON MARINE CO., INC.*, filed in Supreme Court of the State of New York, County of Bronx, Index No. 13941/07, alleging claims for personal injury.

5. Plaintiff alleges that on or about January 31, 2007, he was engaged in work relating to the Vessel and claims to have sustained injury.

6. Plaintiff's claim or claims were not due to any fault, neglect, or want of care on the part of Petitioner, or the Vessel, and occurred without Petitioner's privity or knowledge.

7. Plaintiff's claim or claims may exceed Petitioner's interest in the Vessel.

8. The Vessel was valued at \$95,000 (**EXHIBIT A**, report of Thomas O. Mowbray Marine Sales dated May 15, 2007)

9. Pursuant to Supplementary Rules F of the Federal Rules of Civil Procedure, Petitioner offers an *Ad Interim* Stipulation for Value/Letter of Undertaking in the amount of \$95,000, said amount being not less than the value of Petitioner's interest in the Vessel at the time of the accident and there being no pending freight. (**EXHIBIT B**, *Ad Interim* Stipulation for Value/Letter of Undertaking).

10. Venue in this district is proper as Plaintiff's law suit was brought within the district.

11. Petitioner is entitled to Exoneration from liability for any claims arising from the accident and from any and all claims that have been or may hereafter be made, provided by 46 U.S.C. § 30501 *et seq.* and the various statutes supplementary thereto and amendatory thereof, and Petitioner alleges that it has valid defenses thereto on the facts and law.

12. Petitioner claims, in the alternative, the benefit of Limitation of Liability provided by 46 U.S.C. § 30501 *et seq.* and the various statutes supplementary thereto and amendatory thereof.

13. Petitioner has provided security herewith in the form of an *Ad Interim* Stipulation for Value/Letter of Undertaking sufficient to cover its interest in the Vessel with surety for payment into Court, whenever the same shall be ordered, as provided for by the aforesaid statute and by Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and by the rules and practices of this Court.

WHEREFORE, Petitioner prays:

- (1) That this Court adjudge that Petitioner is not liable for any loss, injury, or damages arising out of the accident; or,
- (2) If Petitioner is adjudged liable, that such liability be limited to the value of Petitioner's interest in the Vessel in the maximum amount of \$95,000, and that Petitioner be discharged therefrom upon the surrender of such interest, and that the money surrendered, paid or secured as aforesaid, be divided pro-rata according to the above-mentioned statutes among such claimants as may duly prove their claim, saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging Petitioner from all further liability.
- (3) That this Court issue an Order to include the following:
 - (a) Directing the issuance of Notice to all persons asserting claims with respect to the accident, which this Complaint seeks Exoneration from or Limitation of Liability, to file their respective claims with the Clerk of this Court and to serve on Petitioner's undersigned counsel a copy thereof on or before a date

to be named in the Notice.

- (b) Directing Petitioner to file an *Ad Interim* Stipulation for Value/Letter of Undertaking as security for the benefit of any and all Claimants, in the amount of Petitioner's interest in the Vessel as of the date of the accident, \$95,000, with interest at the rate of 6% per annum from the date of said security or whenever the Court shall so order.
- (c) Directing that upon Petitioner's filing of an *Ad Interim* Stipulation for Value/Letter of Undertaking, an injunction shall issue enjoining the prosecution against Petitioner, his representatives, insurers, and the Vessel, of any and all claims, suits, actions or proceedings, whether or not already begun, with respect to the accident, except in this proceeding.
- (4) That Petitioner may have such other and further relief as the justice of the cause may require.

Dated: May 15, 2007

RUBIN, FIORELLA & FRIEDMAN LLP
Attorneys for Petitioner
DONJON MARINE CO., INC.

By: 

James E. Mercante (JM 4231)

292 Madison Avenue, 11th Floor
New York, New York 10017
212 953-2381
Our File No. 609-8731

VERIFICATION PURSUANT 28 U.S.C. § 1746

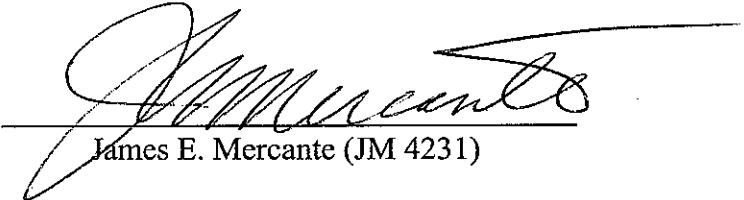
The undersigned a partner of the firm of RUBIN, FIORELLA & FRIEDMAN LLP, attorneys of record for Petitioner; that the undersigned has read the foregoing Complaint for Exoneration from or Limitation of Liability and knows the contents thereof; that the same are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters I believe them to be true.

The grounds for my belief as to all matters not stated to be upon my own knowledge, are materials contained in the file.

The reason for the attorney's verification is that Petitioners reside outside the county where my firm maintains its office.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2007



James E. Mercante (JM 4231)

(973)984-2295
FAX: (973) 984-5181
mowbraytug@aol.com

THOMAS O. MOWBRAY MARINE SALES

NIGHT (973) 538-1789
(570) 476-6724

11A WETMORE AVENUE, MORRISTOWN, N.J. 07960

CERTIFICATE OF MARKET EVALUATION

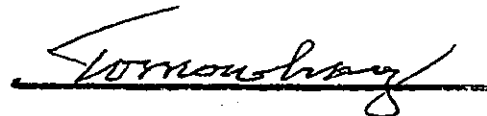
File # : T-828

"WILLIAM E."

TUGBOAT

Official Number:	264306
Dimensions:	84.8' x 24' x 9.6'
Tonnage:	147 Gross
Built:	1952 by Jacobson Shipyard, Oyster Bay, N. Y.
Engine:	One (1) GM 12-567-E, 1,200 H. P.
Capacities:	150 Gallons of Lube Oil 12,000 Gallons of Fuel Oil
Gear:	Falk reduction gear 2.5 : 1
Generators:	One (1) 15 KW Shaft generator, Two (2) KW driven by GM-2-71.
Accommodations:	<u>Eight Men</u>
	\$ 95,000.00

ALL PARTICULARS BELIEVED TO BE CORRECT BUT NOT GUARANTEED.

 5-15-0

YOUR MARINE CONSULTANTS

James E. Mercante (JM 4231)
Michael E. Stern (MS 9113)
RUBIN, FIORELLA & FRIEDMAN LLP
292 Madison Avenue
New York, NY 10017
(212) 953-2381
Attorneys for Petitioner
DONJON MARINE CO., INC.
As owner of Tug WILLIAM E.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In the Matter of the Complaint

CV

of

**AD INTERIM
STIPULATION FOR VALUE/
LETTER OF UNDERTAKING**

DONJON MARINE CO., INC.
as Owner of the Tug WILLIAM E. for
Exoneration from or Limitation of Liability,

Petitioner.
-----x

WHEREAS, DONJON MARINE CO., INC. as owner of the Tug WILLIAM E., is instituting a proceeding in this Court for Exoneration from or Limitation of Liability with respect to claims asserted or to be asserted arising out of an accident which is alleged to have resulted in personal injury on or about January 31, 2007, as more fully described in the Verified Complaint filed herein, and in which proceedings Petitioner prays, inter alia, that the Court will cause due appraisal to be made of the value of its interest in Tug WILLIAM E. for limitation of liability purposes, and that a Notice may issue to all persons having claims with respect to which the claimant seeks limitation, admonishing claimants to file their respective claims with the

Clerk of the Court and to serve on Petitioner's attorney a copy thereof, and that an injunction issue restraining the commencement and further prosecution of all claims and proceedings against Petitioner and its property, including Tug WILLIAM E. their agents, representatives and insurers of Petitioner Tug WILLIAM E., with respect to the accident, except pursuant to the provisions of the Notice to be issued herein; and

WHEREAS, Petitioner wishes to prevent the commencement hereafter of any and all suits, actions or legal proceedings of any nature of description whatsoever in any and all courts or otherwise against Petitioner, its property, Tug WILLIAM E., as aforesaid, and also wish to provide an Ad Interim Stipulation for Value/Letter of Undertaking as security for claims, pending the ascertainment of the amount or value of the interest of Petitioner in the WILLIAM E. as the Court may hereafter order; and

WHEREAS, pending such due appraisalment, the value of Petitioner's interest in the aforesaid WILLIAM E. and pending freight described above on or about January 31, 2007 has been fixed in the amount of Ninety Five Thousand Dollars (\$95,000):

NOW, therefore, in consideration of the premises,

- (1) The American Steamship Owners Mutual Protection and Indemnity Association, Inc. (the "American Club"), having an office and place of business at Shipowners Claims Bureau, Inc., as Manager, One Battery Park Plaza, 31st Floor, New York, New York 10004, USA, hereby undertakes in the sum of US\$95,000 with annual interest at 6% thereon from the date hereof, that Petitioner will pay into the registry of this Court within ten (10) days after the entry of an Order to do so, such sum as aforesaid, or will file in this proceeding a Bond or Stipulation for Value in the usual form of surety in such sum; and

- (2) Pending payment into the Court of such sum or the giving of a Stipulation for Value thereof, this Stipulation for Value / Letter of Undertaking shall stand as security for all claims in said limitation proceeding; and
- (3) Solely for the limited purpose of suit based upon this Stipulation, the American Club hereby submits itself to the jurisdiction of this Court and designates Shipowners Claims Bureau, One Battery Park Plaza, 31st Floor, New York, New York 10004, USA, its agent for service of process and agrees to abide by all orders and decrees of the Court, intermediate or final, and to pay the amount awarded by the final decree rendered by this Court, after appeal, if any, up to the principal amount of its undertaking, with interest as aforesaid, unless the amount or value of Petitioner's interest in Tug WILLIAM E. and its pending freight shall be paid into Court by Plaintiffs or a Bond or Stipulation for Value in the usual form of surety shall be given in the meantime, in which event this Stipulation shall be void; and
- (4) The signing of this Stipulation for Value/Letter of Undertaking by Donald R. Moore, Vice President and Deputy Claims Manager of Shipowners Claims Bureau, Inc., as Manager for the American Club, shall not be construed as binding on him personally or upon Shipowners Claims Bureau, Inc., but is to be binding only upon the American Club.

Dated: New York, New York
15 May , 2007



DONALD R. MOORE
Vice President & Deputy Claims Manager
Shipowners Claims Bureau, Inc.